

**SEVENTY-SECOND DAY**

(Wednesday, May 16, 1979)

The Senate met at 7:20 o'clock p.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Andujar, Blake, Bracklein, Brooks, Clower, Creighton, Doggett, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, Kothmann, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Parker, Patman, Price, Santiesteban, Schwartz, Short, Snelson, Traeger, Truan, Vale, Williams.

A quorum was announced present.

Senator Grant Jones offered the invocation.

On motion of Senator Moore and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

**REPORT OF STANDING COMMITTEE**

Senator Brooks submitted the following report for the Committee on Human Resources:

**H.B. 1921****H.B. 2062****H.B. 1834****H.B. 635****C.S.S.B. 468** (Read first time)**HOUSE BILL 1834 ORDERED NOT PRINTED**

On motion of Senator Brooks and by unanimous consent, **H.B. 1834** was ordered not printed.

**HOUSE BILLS AND RESOLUTIONS ON FIRST READING**

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

**H.C.R. 203**, To Committee on Administration.**H.J.R. 91**, To Committee on State Affairs.**H.B. 951**, To Committee on Finance.**H.B. 13**, To Committee on State Affairs.**H.B. 126**, To Committee on Natural Resources.**H.B. 233**, To Committee on Natural Resources.**H.B. 446**, To Committee on State Affairs.**H.B. 448**, To Committee on Natural Resources.**H.B. 659**, To Committee on State Affairs.**H.B. 806**, To Committee on Finance.**H.B. 1096**, To Committee on Jurisprudence.**H.B. 1224**, To Committee on State Affairs.**H.B. 1309**, To Committee on Education.

**H.B. 1389**, To Committee on Education.  
**H.B. 1423**, To Committee on Education.  
**H.B. 1426**, To Committee on Education.  
**H.B. 1451**, To Committee on Jurisprudence.  
**H.B. 1455**, To Committee on State Affairs.  
**H.B. 1612**, To Committee on Intergovernmental Relations.  
**H.B. 1738**, To Committee on Natural Resources.  
**H.B. 1788**, To Committee on Economic Development.  
**H.B. 1845**, To Committee on Finance.  
**H.B. 1906**, To Committee on Education.  
**H.B. 1924**, To Committee on State Affairs.  
**H.B. 2104**, To Committee on State Affairs.

#### **MESSAGE FROM THE HOUSE**

House Chamber  
May 16, 1979

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I AM DIRECTED BY THE HOUSE TO INFORM THE SENATE THAT  
THE HOUSE HAS PASSED THE FOLLOWING:

All necessary rules suspended, and the House concurred in Senate amendments to House Bill No. 726 by a vote of 112 Ayes, 9 Noes.

All necessary rules suspended, and the Conference Committee Report on House Bill No. 1418 adopted by a vote of 118 Ayes, 4 Noes, 1 Present-Not Voting.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

#### **MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on State Affairs, Subcommittee on Nominations:

Austin, Texas  
May 16, 1979

TO THE SENATE OF THE SIXTY-SIXTH LEGISLATURE, REGULAR  
SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE A MEMBER OF THE BOARD OF TAX ASSESSOR EXAMINERS:

For a six-year term to expire March 1, 1985:

MR. ROY BARTON SINCLAIR of Lufkin, Angelina County, is replacing  
Mr. Norman P. Register of Dallas, Dallas County, whose term expired.

MRS. AUDREY BRUSE of Amarillo, Potter County, is replacing Mr. Ray M. Cornett of Angleton, Brazoria County, whose term expired.

TO BE A MEMBER OF THE TEXAS BOARD OF CORRECTIONS:

For a six-year term to expire February 15, 1985:

MR. HENRY C. BECK of Dallas, Dallas County, is replacing Mr. Mark McLaughlin of San Angelo, Tom Green County, whose term expired.

TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TRINITY RIVER AUTHORITY OF TEXAS:

For a six-year term to expire March 15, 1985:

MR. ROBERT T. MATTOX of Crockett, Houston County, is being reappointed.

Respectfully submitted,

/s/W. P. Clements, Jr.  
Governor of Texas

#### **NOTICE OF CONSIDERATION OF NOMINATIONS**

Senator McKnight gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

#### **BILLS ADDED TO LOCAL AND UNCONTESTED BILLS CALENDAR**

On motion of Senator Jones of Harris and by unanimous consent, the following bills were added to the Local and Uncontested Bills Calendar to be held tomorrow:

**S.B. 1076**  
**S.B. 780**

#### **MOTION RELATIVE TO LOCAL AND UNCONTESTED CALENDAR PROCEDURE**

Senator Jones of Harris made the following motion:

I move that the bills and resolutions listed on the Local and Uncontested Calendar be set as Special Order for 9:00 o'clock a.m. tomorrow and considered in the order listed, with the understanding that a bill or resolution removed from the Calendar will not be considered. I further move that the Three-Day Rule be suspended with respect to bills on the Local and Uncontested Calendar that are engrossed tomorrow.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 409 ON THIRD READING**

Senator Meier moved to suspend the regular order of business to take up on its third reading and final passage:

**H.B. 409**, Relating to the rate of interest on loans secured by certain residential property.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Andujar, Blake, Brooks, Creighton, Doggett, Farabee, Harris, Howard, Jones of Harris, Jones of Taylor, McKnight, Meier, Mengden, Moore, Ogg, Parker, Price, Santiesteban, Short, Snelson, Traeger, Williams.

Nays: Braecklein, Clower, Kothmann, Longoria, Mauzy, Patman, Schwartz, Truan, Vale.

The bill was read third time and was finally passed by the following vote: Yeas 21, Nays 10.

Yeas: Andujar, Blake, Brooks, Creighton, Doggett, Harris, Howard, Jones of Harris, Jones of Taylor, McKnight, Meier, Mengden, Moore, Ogg, Parker, Price, Santiesteban, Short, Snelson, Traeger, Williams.

Nays: Braecklein, Clower, Farabee, Kothmann, Longoria, Mauzy, Patman, Schwartz, Truan, Vale.

#### SENATE BILL 357 WITH HOUSE AMENDMENTS

Senator Meier called **S.B. 357** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - McFarland

Substitute the following for S.B. No. 357:

#### A BILL TO BE ENTITLED AN ACT

relating to the regulation of certain business and insurance practices; amending certain provisions of Chapter 17, Business & Commerce Code, as amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 17.43, Business & Commerce Code, as added, is amended to read as follows:

Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both actual damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

SECTION 2. Section 17.45, Business & Commerce Code, as amended, is amended by adding Subsection (10) to read as follows:

(10) "Actual damages" means economic loss including reasonably foreseeable incidental and consequential damages and does not include any payment for mental or physical pain or anguish except in cases where the act complained of resulted in damages for physical injury to the person.

SECTION 3. Section 17.46, Business & Commerce Code, as amended, is amended to read as follows:

Sec. 17.46. **DECEPTIVE TRADE PRACTICES UNLAWFUL.** (a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the ~~[The]~~ term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- (6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- (14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- (15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;
- (16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;
- (17) advertising of any sale by fraudulently representing that a person is going out of business;
- (18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or

prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods; [or]

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced; [or]

(22) [(21)] filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; ~~except that it is not a violation of this subsection where the defendant resides in a county having a population of less than 250,000 and the suit was filed in the nearest county with a population of 250,000 or more~~; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract; ~~and provided further that a violation of this Act shall not occur by the joinder of multiple parties to an obligation where venue is otherwise proper as to the primary obligor or to any joint obligor~~; or

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

(c) (1) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

(2) In construing this subchapter the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions. ~~[It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.50 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations~~

~~given by the federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].~~

(d) For the purposes of the relief authorized in Section 17.50(a)(1) of this subchapter, the term "false, misleading, or deceptive acts or practices" is limited to the acts enumerated in specific subdivisions of Subsection (b) of this section.

SECTION 4. Section 17.50, Business & Commerce Code, as amended, is amended to read as follows:

Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may maintain an action where ~~(if he has been adversely affected by)~~ any of the following constitute a producing cause of actual damages:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is specifically enumerated in a subdivision of Section 17.46(b) ~~(an act or practice declared to be unlawful by Section 17.46)~~ of this subchapter;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person;

or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, Texas Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) ~~[three times]~~ the amount of actual damages plus court costs and reasonable and necessary attorneys' fees; ~~[reasonable in relation to the amount of work expended]~~ or if the trier of fact finds that the conduct of the defendant warrants an award in excess of actual damages, the trier of fact may award an amount which is not more than three times the amount of actual damages plus court costs and reasonable and necessary attorneys' fees;

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith, or brought for the purpose of harassment, the court shall ~~[may]~~ award to the defendant reasonable and necessary attorneys' fees ~~[in relation to the amount of work expended,]~~ and court costs.

SECTION 5. Section 17.50A, Business & Commerce Code, as added, is amended to read as follows:

Sec. 17.50A. NOTICE: OFFER OF SETTLEMENT. (a) As a prerequisite to filing a suit seeking damages under Section 17.50(b)(1) of this subchapter against any person, a consumer shall give written notice to the person at least 30 days before filing the suit advising the person of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys'

fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

(b) If the giving of 30 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations, or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (c) of this section and by Subsection (d), Section 17.50B of this subchapter may be made within 30 days after the filing of the suit or counterclaim.

(c) Any person who receives the written notice provided by Subsection (a) of this section may, within 30 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 30 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. On a finding by the trier of fact that the relief tendered was reasonable, the consumer may not recover an amount in excess of the amount tendered in the settlement offer.

(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer, as provided for by Subsection (d) of this section.

~~[DAMAGES: DEFENSES. In an action brought under Section 17.50 of this subchapter, actual damages only and attorney's fees reasonable in relation to the amount of work expended and court costs may be awarded where the defendant:~~

~~(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid the error; or~~

~~(2) proves that he had no written notice of the consumer's complaint before suit was filed, or that within 30 days after he was given written notice he tendered to the consumer (a) the cash value of the consideration received from the consumer or the cash value of the benefit promised, whichever is greater, and (b) the expenses, including attorney's fees, if any, reasonably incurred by the consumer in asserting his claim against the defendant; or~~

~~(3) in the case of a suit under Section 17.50(a)(2) the defendant proves that he was not given a reasonable opportunity to cure the defects or malfunctions before suit was filed.)~~

SECTION 6. Chapter 17, Business & Commerce Code, as amended, is amended by adding Section 17.50B to read as follows:

Sec. 17.50B. DAMAGES: DEFENSES. (a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:



(1) written information relating to the particular goods or service in question obtained from official government records, if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

(2) written information relating to the particular goods or service in question obtained from another source, if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

(3) written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) In asserting a defense under Section 17.50B(a)(1), (2), or (3) above, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery if other conduct of the defendant not the subject of a defensive finding under Section 17.50B(a)(1), (2), or (3) above was a producing cause of damages of the plaintiff.

(c) In a suit where a defense is asserted under Section 17.50B(a)(2) above, suit may be asserted against the third party supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided no double recovery may result.

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

(1) the amount of actual damages claimed; and

(2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

SECTION 7. Chapter 17, Business & Commerce Code, as amended, is amended by adding Section 17.51 to read as follows:

Sec. 17.51. CLASS ACTION PROHIBITED. Notwithstanding any other provision of law or rule of civil procedure, a class action may not be brought under Subchapter E of this chapter except by the attorney general.

SECTION 8. Section 17.56, Business & Commerce Code, as amended, is amended to read as follows:

Sec. 17.56. VENUE. An action brought which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought, or in the county in which the alleged act or practice occurred or in a county in which the defendant or an authorized agent of the defendant personally solicited the transaction made the subject of the action at bar ~~(done business)~~.

SECTION 9. Chapter 17, Business & Commerce Code, as amended, is amended by adding Section 17.56A to read as follows:

Sec. 17.56A. LIMITATION. All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred, or within two years after the consumer discovered, or in the exercise of reasonable diligence, should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of

180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

SECTION 10. This Act shall be applied prospectively only. Nothing in this Act affects either procedurally or substantively a cause of action that arose either in whole or in part prior to the effective date of this Act.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 2 - D. Hill

Amend **C.S.S.B. 357** by striking out Section 2

Amendment No. 3 - D. Hill

Amend **C.S.S.B. 357** Section 4(b)(1) to read as follows:

(1) ~~(three times)~~ the amount of actual damages plus court costs and reasonable and necessary attorneys' fees; ~~reasonable in relation to the amount of work expended~~ or if the trier of fact finds that the conduct of the defendant warrants an award in excess of actual damages, the trier of fact shall award three times the amount of the first \$1,000 of actual damages and may award not more than three times the amount of actual damages in excess of \$1,000 plus court costs and reasonable and necessary attorneys' fees;

Amendment No. 4 - Henderson

Amend the Hill amendment to CSSB 357 page 7 by striking lines 27 and page 8 lines 1-5 and substituting in lieu thereof:

"In addition the trier of fact shall award two times the amount of first \$1,000 of actual damages. If the trier of fact finds that the conduct of the defendant warrants an award in excess of actual damages the trier of fact may award not more than three times the amount of actual damages in excess of \$1,000 and shall award court costs and reasonable and necessary attorneys' fees.

Amendment No. 5 - D. Hill and Grant

Amend **C.S.S.B. 357** by striking Section 7

Amendment No. 6 - D. Hill

Amend C.S.S.B. No. 357 by striking all below the enacting clause and substituting the following:

SECTION 1. Section 17.43, Business & Commerce Code, as added, is amended to read as follows:

Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both actual damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a

violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

SECTION 2. Subdivision (9), Section 17.45, Business & Commerce Code, as amended, is amended to read as follows:

(9) "Knowingly" means actual awareness of the falsity, ~~or~~ deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under Section 17.50(a)(2), actual awareness of the act or practice constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

SECTION 3. Section 17.46, Business & Commerce Code, as amended, is amended to read as follows:

Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the ~~The~~ term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- (6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods; ~~or~~

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced; ~~or~~

(22) ~~[(21)]~~ filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; ~~except that it is not a violation of this subsection where the defendant resides in a county having a population of less than 250,000 and the suit was filed in the nearest county with a population of 250,000 or more~~; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract; ~~and provided further that a violation of this Act shall not occur by the joinder of multiple parties to an obligation where venue is otherwise proper as to the primary obligor or to any joint obligor~~; or

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

(c) (1) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

(2) In construing this subchapter the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions. ~~It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.50 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].~~

(d) For the purposes of the relief authorized in Section 17.50(a)(1) of this subchapter, the term "false, misleading, or deceptive acts or practices" is limited to the acts enumerated in specific subdivisions of Subsection (b) of this section.

SECTION 4. Section 17.50, Business & Commerce Code, as amended, is amended to read as follows:

Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may maintain an action where ~~[if he has been adversely affected by]~~ any of the following constitute a producing cause of actual damages:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is specifically enumerated in a subdivision of Section 17.46(b) ~~[an act or practice declared to be unlawful by Section 17.46]~~ of this subchapter;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person;

or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, Texas Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) ~~[three times]~~ the amount of actual damages found by the trier of fact. In addition the court shall award two times that portion of the actual damages that does not exceed \$1,000. If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three times the amount of actual damages in excess of \$1,000 ~~[plus court costs and attorneys' fees reasonable in relation to the amount of work expended];~~

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory

authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith, or brought for the purpose of harrassment, the court shall [may] award to the defendant reasonable and necessary attorneys' fees [in relation to the amount of work expended,] and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

SECTION 5. Section 17.50A, Business & Commerce Code, as added, is amended to read as follows:

Sec. 17.50A. NOTICE: OFFER OF SETTLEMENT. (a) As a prerequisite to filing a suit seeking damages under Section 17.50(b)(1) of this subchapter against any person, a consumer shall give written notice to the person at least 30 days before filing the suit advising the person of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

(b) If the giving of 30 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations, or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (c) of this section and by Subsection (d), Section 17.50B of this subchapter may be made within 30 days after the filing of the suit or counterclaim.

(c) Any person who receives the written notice provided by Subsection (a) of this section may, within 30 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 30 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less.

(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer, as provided for by Subsection (d) of this section.

~~[DAMAGES: DEFENSES. In an action brought under Section 17.50 of this subchapter, actual damages only and attorney's fees reasonable in relation to the amount of work expended and court costs may be awarded where the defendant:~~

~~[(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid the error; or~~

~~[(2) proves that he had no written notice of the consumer's complaint before suit was filed, or that within 30 days after he was given written notice he tendered to the consumer (a) the cash value of the consideration received from the consumer or the cash value of the benefit promised, whichever is greater, and (b) the expenses, including attorney's fees, if any, reasonably incurred by the consumer in asserting his claim against the defendant; or~~

~~[(3) in the case of a suit under Section 17.50(a)(2) the defendant proves that he was not given a reasonable opportunity to cure the defects or malfunctions before suit was filed.]~~

SECTION 6. Chapter 17, Business & Commerce Code, as amended, is amended by adding Section 17.50B to read as follows:

Sec. 17.50B. DAMAGES: DEFENSES. (a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

(1) written information relating to the particular goods or service in question obtained from official government records, if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

(2) written information relating to the particular goods or service in question obtained from another source, if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

(3) written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) In asserting a defense under Section 17.50B(a)(1), (2), or (3) above, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery if other conduct of the defendant not the subject of a defensive finding under Section 17.50B(a)(1), (2), or (3) above was a producing cause of damages of the plaintiff.

(c) In a suit where a defense is asserted under Section 17.50B(a)(2) above, suit may be asserted against the third party supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided no double recovery may result.

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

(1) the amount of actual damages claimed; and

(2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

SECTION 7. Section 17.56, Business & Commerce Code, as amended, is amended to read as follows:

Sec. 17.56. VENUE. An action brought which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought, or in the county in which the alleged act or practice occurred or in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar ~~(done-business)~~.

SECTION 8. Chapter 17, Business & Commerce Code, as amended, is amended by adding Section 17.56A to read as follows:

Sec. 17.56A. LIMITATION. All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred, or within two years after the consumer discovered, or in the exercise of reasonable diligence, should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

SECTION 9. This Act shall be applied prospectively only. Nothing in this Act affects either procedurally or substantively a cause of action that arose either in whole or in part prior to the effective date of this Act.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendments were read.

Senator Meier moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Andujar, Blake, Braecklein, Brooks, Creighton, Farabee, Harris, Howard, Jones of Taylor, Kothmann, Longoria, McKnight, Meier, Mengden, Moore, Ogg, Price, Santiesteban, Short, Snelson, Traeger, Vale, Williams.

Nays: Clower, Doggett, Jones of Harris, Mauzy, Parker, Patman, Schwartz, Truan.

### RECESS

On motion of Senator Moore the Senate at 7:40 o'clock p.m. took recess until 9:00 o'clock a.m. tomorrow.



**SEVENTY-SECOND DAY**

(Continued)

(Thursday, May 17, 1979)

**AFTER RECESS**

The Senate met at 9:00 o'clock a.m. and was called to order by Senator Howard.

**MESSAGE FROM THE HOUSE**

House Chamber  
May 17, 1979

HONORABLE W. P. HOBBY  
PRESIDENT OF THE SENATE

SIR: I AM DIRECTED BY THE HOUSE TO INFORM THE SENATE THAT THE HOUSE HAS PASSED THE FOLLOWING:

**S.J.R. 7** To repeal and prohibit all State ad valorem taxes on any property within this State by amending Article VII, Section 17, and Article VIII, Section 1-3, of the Texas Constitution; to establish the State Higher Education Assistance Fund; and to amend Article VII, Section 18, of the Texas Constitution. (With amendments)

**HB 2205**, A bill to be entitled An Act relating to the creation, purposes, powers, duties, operation, expansion, and financing of water import authorities; providing a penalty.

Respectfully,

BETTY MURRAY, Chief Clerk  
House of Representatives

**LOCAL AND UNCONTESTED BILLS CALENDAR**

The Presiding Officer (Senator Howard in Chair) announced that the time had arrived for the consideration of the Local and Uncontested Bills Calendar in accordance with the provisions of **S.R. 16**. (Bills having been set as Special Order and Constitutional Three-Day Rule suspended by vote of 31-0 on May 16, 1979.)

The following bills were laid before the Senate, read second time, amended (where applicable), passed to engrossment, read third time and passed. (Sponsor and vote on final passage indicated after caption of each bill. When amended, vote on final passage follows the amendment.)

**C.S.S.B. 360** (Farabee) Defining the term "sub-contractor" in the Worker's Compensation Act. (31-0)

**S.B. 506** (Ogg) Relating to certification of operators of solid waste facilities. (31-0)

**S.B. 916** (Traeger) Relating to participation of credit unions in state and local employees' deferred compensation plans. (31-0)

**S.B. 1011** (Mengden) Relating to overtime work for peace officers in certain counties. (31-0)

**S.B. 1050** (Ogg) Establishing the Justice Information and Management System in Harris County. (31-0)

**S.B. 1051** (Ogg) Relating to operation of a hospital under the Hospital Authority Act. (31-0)

**S.B. 1053** (Ogg) Relating to operation of a hospital under the County Hospital Authority Act. (31-0)

(Senator Jones of Harris in Chair)

**S.B. 1054** (Ogg) Relating to the sale of real property by a hospital authority. (31-0)

**S.B. 1077** (Harris) Relating to solid waste resource recovery. (31-0)

**S.B. 1178** (Mauzy) Relating to the placement of troubled school districts under a temporary administrator.

Senator Mauzy offered the following committee amendment to the bill:

Amend **S.B. 1178**, Section 11.53 by striking subsection (a) and substituting in lieu thereof the following:

(a) The state commissioner of education, represented by the Attorney General of the State of Texas, may request a court of competent jurisdiction to place a school district temporarily under the control of a court-appointed administrator for the purpose of correcting deficiencies in that district's operation which have placed it in serious violation of the Principles, Standards and Procedures for the Accreditation of School Districts, as adopted by the State Board of Education and as are then in effect. The commissioner may initiate such an application only after the State Board of Education has determined, by reason of the serious violation, that the accreditation of the district should be denied or revoked. The temporary administration of the district, if ordered by the court, shall operate in lieu of denial or revocation of the district's accreditation. The order appointing such a temporary administrator shall suspend the powers of the local board of trustees of that school district. Upon a showing that a school district is in serious violation of the Principles, Standards and Procedures, the court shall issue such an order.

The committee amendment was read and was adopted.

Senator Mauzy offered the following committee amendment to the bill:

Amend **S.B. 1178**, Section 11.53 by striking Subsection (g) and substituting in lieu thereof the following:

(g) During the term of his appointment, the temporary administrator shall be empowered to exercise all the powers granted to the board of trustees of the school district by this code. The temporary administrator shall also possess the

authority and prerogatives of a school district superintendent and may issue such orders or directives as may be reasonably necessary to bring the district into compliance with the Principles, Standards, and Procedures for Accreditation. The temporary administrator shall be subject to the administrative control of the state commissioner of education. If the temporary administrator is a state employee, he shall be compensated at the regular salary for his position from funds regularly appropriated for such position, and, if not a state employee, the temporary administrator shall be compensated from the Minimum Foundation Fund as the court may direct upon recommendation of the state commissioner of education.

The committee amendment was read and was adopted.

On motion of Senator Mauzy and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

**S.B. 1194** (Truan) Relating to exemptions from jury service. (31-0)

**S.B. 1247** (Harris) Relating to the engineer-director for Highways and Public Transportation. (31-0)

**C.S.S.B. 1262** (Schwartz) Relating to the terms of the 10th, 56th, and 122nd Judicial Districts. (vv)

**S.B. 1264** (Truan) Relating to compensation of district attorney of 105th Judicial District. (31-0)

**S.B. 1289** (Jones of Harris) Relating to the compensation of probate judges in certain counties.

Senator Jones of Harris offered the following amendment to the bill:

Amend **S.B. 1289** by striking quoted Section 1 of Section 1 and substituting in lieu thereof the following:

“Section 1. In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court shall fix the salary of each of the ~~[Judges of the Probate Courts,]~~ Judges of the County Courts at Law, and Judges of the County Criminal Courts at Law at not less than One Thousand Dollars (\$1,000) less per annum than the total annual salary, including supplements, received by Judges of the District Court in such counties, which shall be paid in twelve (12) equal monthly installments. The salary of each of the Judges of the Probate Courts shall be fixed by the Commissioners Court at not less than the total annual salary, including supplements, received by the Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.”

The amendment was read and was adopted.

On motion of Senator Jones of Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (vv)

**C.S.S.B. 1294** (Patman) Relating to creation of the Jackson County Hospital District.

Senator Patman offered the following amendment to the bill:

Amend C.S.S.B. No. 1294 by striking all below the enacting clause and substituting the following:

**SECTION 1. BOUNDARIES AND NAME.** In accordance with the provisions of Article IX, Section 9, of the Texas Constitution, this Act authorizes the dissolution of the Edna Hospital District and the creation, establishment, administration, maintenance, operation, and financing of a hospital district within this state, the boundaries of which shall be cointensive with those of Jackson County. The new district shall be known as the Jackson County Hospital District with the rights, powers, and duties provided in this Act.

**SECTION 2. ESTABLISHMENT OF HOSPITAL SYSTEM.** The district shall provide for the establishment of a hospital system by the purchase, construction, acquisition, repair, or renovation of buildings and improvements, and equipping for hospital and medical care purposes, and the administration of the system for hospital purposes.

**SECTION 3. CREATION OF DISTRICT.** (a) The district shall not be created nor shall any tax be authorized unless and until the creation and the tax are approved by a majority of the qualified electors of the area of the proposed district voting at an election called and held for that purpose and unless and until the dissolution of the Edna Hospital District is approved by a majority of the qualified electors of the Edna Hospital District voting at that election. An election shall be held on July 28, 1979, by order of the temporary directors of the proposed district. If the propositions to create the district and authorize the tax and to dissolve the Edna Hospital District are not approved at that election, a subsequent election shall be held on those propositions each time a petition requesting an election signed by 100 or more qualified electors residing in the proposed district is filed with the temporary board. Within 10 days after a petition is filed, the temporary directors shall order the election. The temporary directors may choose a date for an election that is not less than 35 or more than 60 days from the date the election is ordered. Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), does not apply to an election held under this Act. The orders calling the election shall specify the date, the place or places of holding the election, the form of ballot, and the presiding judge and alternate judge for each voting place and shall provide for clerks as in county elections. Notice of the election shall be given by the temporary directors by publishing a substantial copy of the election order in a newspaper or newspapers of general circulation in the proposed district once a week for two consecutive weeks, the first publication to appear at least 30 days before the date set for the election.

(b) At the election, the qualified voters shall vote whether or not to approve the creation of the proposed hospital district, to assume the outstanding indebtedness incurred for hospital purposes by the Edna Hospital District, Jackson County, or any city or town in the proposed district, to accept transfer of existing hospital facilities and all assets of the Edna Hospital District, to accept existing hospital facilities and assets related to hospital purposes of Jackson County or any city or town in the proposed district, and to levy annual taxes not to exceed 75 cents on the \$100 valuation. At the same election, the qualified voters of the Edna Hospital District shall vote to dissolve that district, the dissolution conditioned on sufficient votes being cast to create the proposed district. The Edna Hospital District is not dissolved until a majority of the qualified voters in the proposed district voting at an election votes to create the proposed district, and a majority of the qualified voters in the Edna Hospital

District votes to dissolve the Edna Hospital District. The ballots cast in the Edna Hospital District on the proposition to create the proposed district shall be counted separately from the ballots cast on that proposition in the portion of the county outside the Edna Hospital District.

(c) The ballot used at the election shall be worded so that votes may be cast for or against the following proposition: "The creation of the Jackson County Hospital District, providing for the levy of a tax not to exceed 75 cents on each \$100 valuation on all taxable property within the hospital district subject to hospital district taxation, providing for the transfer to the district of the outstanding indebtedness, existing hospital facilities, and all assets of the Edna Hospital District, and providing for the transfer of existing hospital facilities and the assets and indebtedness related to hospital purposes of Jackson County and any city or town within the Jackson County Hospital District."

(d) A separate ballot for the dissolution of the Edna Hospital District shall be given qualified voters in that district. It shall be worded so that votes may be cast for or against the following proposition: "The dissolution of the Edna Hospital District if the Jackson County Hospital District is created, providing for the transfer to the Jackson County Hospital District of all the outstanding indebtedness, existing hospital facilities, and all assets of the Edna Hospital District."

(e) If a majority of the qualified voters voting at the election in the proposed district votes against the creation of the Jackson County Hospital District, or if a majority of the qualified voters in the Edna Hospital District voting in the election do not vote for dissolution of that district, the Mauritz Memorial Hospital and the Edna Hospital District shall share equally the cost of conducting the election; and other elections may be held on the same propositions.

(f) Within 20 days after the election is held, the temporary directors shall convene and canvass the returns of the election and, if the election results are favorable to the propositions specified in Subsections (c) and (d) of this section, the temporary directors shall so find and declare the Jackson County Hospital District created and the Edna Hospital District dissolved.

**SECTION 4. BOARD OF DIRECTORS.** (a) On the effective date of this Act, each of the following persons is named as a temporary director to serve as a member of the board of directors of the district:

1. representing the district at large, J. L. Tipton;
2. representing precinct one, Itasca Stafford;
3. representing precinct one, Roland Espinosa;
4. representing precinct two, Jack Willeford;
5. representing precinct two, Dr. Walter Ray Konzen;
6. representing precinct three, W. C. "Bill" Hollingsworth;
7. representing precinct three, Tim Garcia;
8. representing precinct four, Carroll Roome; and
9. representing precinct four, A. W. McBride.

(b) Each temporary director shall take the constitutional oath of office within 15 days after the effective date of this Act. Until the district is created, the only duties of the temporary board are to order elections, canvass the returns, and declare the results as provided in Section 3 of this Act.

(c) Any vacancy in the office of temporary director, whether by reason of failure to qualify or vacancy prior to the confirmation of the district at an election, shall be filled by appointment by majority vote of the remaining directors.

(d) At the time the creation of the district and the dissolution of the Edna Hospital District are approved and the returns of the election officially

canvassed, the persons then serving as temporary directors shall become permanent directors of the district to serve until the first Saturday in April of the year following the creation election. Successors to the board shall be chosen by the election of two directors from each commissioners precinct and one director elected at large. In even-numbered years, the successors to directors elected from the even-numbered positions are elected. In odd-numbered years, the successors to directors elected from odd-numbered positions and the director elected at large are elected. Successors shall be elected for two-year terms. Candidates for director shall run for office from positions. Candidates for director from a precinct shall run for one of the two positions for that precinct and candidates for the director at large shall run for the at-large position. If no candidate for director from a particular position receives a majority of the votes of the qualified voters voting for that position in the election, the board shall order a runoff election between the two candidates for the position receiving the highest number of votes at the original election, and the runoff election shall be held on the next first Saturday in May. The board shall publish notice of the runoff election in a newspaper or newspapers that individually or collectively provide general circulation in the area of the runoff election one time at least seven days before the date of the runoff election. If either candidate dies or files a written request with the secretary of the board to have his or her name omitted from the ballot at the runoff election, the ballot shall be printed to provide for voting for either of the two candidates who received the highest number of votes at the election on the first Saturday in April, without regard to votes cast for the candidate who died or filed the request to be omitted from the ballot. Of the names printed on the ballot at the runoff election, the name of the candidate who received the higher number of votes at the election on the first Saturday in April shall be printed first on the ballot.

(e) Except in the case of runoff elections, the board shall publish notice of each election of directors in a newspaper or newspapers that individually or collectively provide general circulation in the district one time at least 30 days before the date of the election. A candidate for director shall file with the secretary of the board of directors at least 35 days before the election a request to have his or her name printed on the ballot for the position for which he or she desires to be a candidate. The board shall canvass the returns and declare the results. A vacancy in office shall be filled for the unexpired term by appointment by the remainder of the board of directors.

(f) No person shall be elected or appointed as a member of the board unless he or she is a resident of the district and a qualified elector. A director elected or appointed to represent the area of a commissioners precinct must be a resident of that area, and failure of the director to maintain residence there is a ground for removal from office in the manner provided by law for removal of county officers. Neither an administrator, the attorney, nor any employee of the district shall be eligible to serve as a director.

(g) The board shall organize by electing from its number a president, a vice-president, and a secretary. Officers who are elected by the board serve in that capacity for a term of one year and a vacancy shall be filled for the unexpired term by the board. Any five members of the board shall constitute a quorum, and a concurrence of five shall be required in all matters pertaining to the business of the district except that a concurrence of seven is required to order an election on the sale or closing of a hospital transferred to the district by the county or the Edna Hospital District or to recommend to the legislature legislation to amend this Act.

**SECTION 5. POWERS AND DUTIES.** The board shall manage, control, and administer the hospital system and all funds and resources of the district, but

in no event shall any operating, depreciation, or building reserves be invested in any funds or securities other than those specified in Article 836 or 837, Revised Civil Statutes of Texas, 1925, as amended. The district, through its board, may sue and be sued and may promulgate rules governing the operation of the hospital, the hospital system, its staff, and its employees. The board may appoint a qualified administrator or assistant administrator for each hospital of the district and an attorney may be appointed for the district. The administrators, the attorney, and the assistant administrators, if any, shall serve at the will of the board and shall receive the compensation determined by the board. An administrator shall, on assuming his or her duties, execute a bond payable to the hospital district in an amount to be set by the board, in no event less than \$5,000, conditioned that he or she shall perform the duties required of him or her, and containing such other conditions as the board may require. The expense of the bond may be paid from funds of the district. The administrator shall supervise all the work and activities of his or her hospital and shall have general direction of the affairs of his or her hospital, subject to the limitations as may be prescribed by the board. The board may appoint to the staff doctors it may deem necessary for the efficient operation of the district, and may provide for temporary appointments to the staff if warranted by circumstances. The board may delegate to an administrator the authority to employ technicians, nurses, and employees of the district or of his or her hospital. The board may contract with other political subdivisions or governmental agencies whereby the district will provide investigatory or other services as to facilities for the medical care, hospital, or welfare needs of the inhabitants of the district, and may contract with any county or incorporated municipality located outside its boundaries for reimbursement for the care and treatment of the sick, diseased, or injured persons of that county or municipality. The district may also contract with the state or agencies of the federal government for the reimbursement for the treatment of sick, diseased, or injured persons.

**SECTION 6. BUDGET.** The district shall be operated on the basis of a fiscal year established by the board, provided the fiscal year may not be changed during the time revenue bonds of the district are outstanding or more than once in any 24-month period. The board shall have an annual audit made of the financial condition of the district, which together with other records of the district shall be open to inspection at the principal office of the district. Each administrator shall prepare annually a separate budget for the hospital for which he or she is administrator, and the board shall combine those budgets into a single budget for the district. The budget shall also contain a complete financial statement of the district showing all outstanding obligations of the district, the cash on hand to the credit of each fund of the district, the funds received from all sources during the previous year, the funds available from all sources during the ensuing year, the balances expected at the end of the year in which the budget is being prepared, estimated revenues and balances available to cover the proposed budget, and the estimated tax rate that will be required. A public hearing on the annual budget shall be held by the board after notice of a hearing has been published in a newspaper with general circulation in the district one time at least 10 days before the date set for the hearing. Any person who is residing in or a taxpayer of the district is entitled to be present and participate at the hearing. At the conclusion of the hearing, the budget, as proposed by the administrators, shall be acted on by the board. The board shall have authority to make changes in the budget that in its judgment the law warrants and the interest of the taxpayers demands. No expenditure may be made for any expense not included in the annual budget or an amendment to it. The annual budget may be amended from time to time as the circumstances may require, but the

annual budget and all amendments to it shall be approved by the board. As soon as practicable after the close of each fiscal year, the administrators shall prepare for the board a full sworn statement of all money belonging to the district and a full account of the disbursements of same.

**SECTION 7. GENERAL OBLIGATION BONDS.** (a) The board may issue and sell its bonds in the name and on the faith and credit of the hospital district for any purpose related to the purchase, construction, acquisition, repair, and renovation of buildings and improvements, and equipping the same for hospital purposes. At the time of the issuance of any bonds by the district, a tax shall be levied by the board sufficient to create an interest and sinking fund to pay the interest on and principal of the bonds as they mature, providing that the tax together with any other taxes levied for the district shall not exceed 75 cents on each \$100 valuation of all taxable property located in the district subject to hospital district taxation in any one year. No general obligation bonds may be issued by the hospital district except refunding bonds until authorized by a majority of the qualified electors of the district. The board, in ordering a bond election, shall specify the date of the election, the amount of bonds to be authorized, the maximum maturity of the bonds, the place or places where the election will be held, and the presiding judge and alternate judge for each voting place, and shall provide for clerks as in county elections. Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), does not apply to a bond election. Notice of any bond election shall be given as provided in Article 704, Revised Civil Statutes of Texas, 1925, as amended, and the election shall be conducted in accordance with the Texas Election Code, as amended, except as modified by the provisions of this Act. The board shall canvass the returns and declare the results.

(b) Refunding bonds of the district may be issued for the purpose of refunding and paying off any outstanding indebtedness it has issued or assumed. The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of any outstanding indebtedness, the refunding bonds shall be issued and payments made in the manner specified by Chapter 503, Acts of the 54th Legislature, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes). Refunding bonds shall be issued in conformity with Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).

(c) Bonds of the district shall mature within 40 years of their date, shall be executed in the name of the hospital district and in its behalf by the president of the board, shall be countersigned by the secretary in the manner provided by the Texas Uniform Facsimile Signature of Public Officials Act, as amended (Article 717j-1, Vernon's Texas Civil Statutes), shall bear interest at a rate not to exceed that prescribed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), and shall be subject to the same requirements in the manner of approval by the attorney general and registration by the comptroller of public accounts as are by law provided for approval and registration of bonds issued by counties. On the approval of the bonds by the attorney general and registration by the comptroller, the bonds shall be incontestable for any cause.

**SECTION 8. REVENUE BONDS.** In addition to the power to issue bonds payable from taxes levied by the district as contemplated by Section 7 of this Act, the board may issue and refund any previously issued revenue bonds for purchasing, constructing, acquiring, repairing, equipping, or renovating buildings and improvements for hospital purposes, and for acquiring sites for hospital



purposes. The bonds shall be payable from and secured by a pledge of all or any part of the revenues of the district to be derived from the operation of its hospital or hospitals, and the bonds may be additionally secured by a mortgage or deed of trust lien on any part or all of its property. The bonds shall be issued in the manner and in accordance with the procedures and requirements specified for the issuance of revenue bonds by county hospital authorities in Sections 8, 10, 11, 12, and 13 of Chapter 122, Acts of the 58th Legislature, 1963, as amended (Article 4494r, Vernon's Texas Civil Statutes).

**SECTION 9. DISTRICT PROPERTY.** (a) The district may sell or otherwise dispose of any real or personal property or equipment of any nature, on terms and conditions found by the board to be in the best interest of its inhabitants, except that the board may not sell or close a hospital transferred to the district by Jackson County or the Edna Hospital District unless the sale or closing of the hospital is approved by a two-thirds majority of the qualified electors of the district voting at an election called and held for that purpose. The board may not call an election on the question of the sale or closing of one of those hospitals without the concurrence of seven directors, and may not call an election for that purpose within 12 months of a preceding election for that purpose.

(b) The board may prescribe the method and manner of making purchases and expenditures by and for the hospital district, and may prescribe all accounting and control procedures. Contracts for construction involving the expenditure of more than \$10,000 may be made only after advertising in the manner provided by Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds shall apply to construction contracts let by the district. The district may acquire equipment for use in its hospital system and mortgage or pledge the property acquired as security for the payment of the purchase price. Except as permitted in the preceding sentence and Sections 7 and 8 of this Act, the district may incur no obligation payable from revenues of the district, tax or otherwise, except those on hand or to be on hand within the then current and following fiscal years of the district.

(c) Subject to the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes), after providing for the interest and sinking funds requirement of the bonded indebtedness created by the Edna Hospital District and assumed by the Jackson County Hospital District, and further providing for any tax revenue that may be required to support operations expense, together with annual maintenance requirements for each facility, the board shall allocate to the hospital transferred to the district by Jackson County an amount not to exceed the next \$150,000 of tax income available for repairs and improvements required to maintain operations during each of the three years following creation of the district. A similar additional allocation may be made for the hospital located in Edna in the event the board determines that need therefor exists.

**SECTION 10. DEPOSITORY.** (a) After advertising in the manner provided by Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), the board shall choose by competitive bidding one or more banks within or without its boundaries to serve as depository for the funds of the district. All funds of the district, except those invested as provided by Section 5 of this Act and those transmitted to a bank or banks of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank

and shall remain on deposit. Nothing in this Act shall limit the power of the board to place a portion of the funds on time deposit or purchase certificates of deposit.

(b) Before the district deposits funds in any bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank shall be required to execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

SECTION 11. TAX RATE. (a) The board may annually levy a tax not to exceed the amount permitted by this Act for the purpose of paying:

(1) the indebtedness assumed or issued by the district, but no tax may be levied to pay the principal of or interest on revenue bonds issued under the provisions of Section 8 of this Act; and

(2) the maintenance and operating expenses of the district, including improvements to facilities of the district.

(b) In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

SECTION 12. BONDS AS INVESTMENTS. All bonds issued and indebtedness assumed by the district shall be and are hereby declared to be legal and authorized investments of banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, trustees, and sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions or corporations of the State of Texas, and public funds of the State of Texas, or cities, towns, villages, counties, school districts, or other political subdivisions or corporations of the State of Texas, and shall be lawful and sufficient security for those deposits to the extent of their value when accompanied by all unmatured coupons appurtenant thereto.

SECTION 13. EMINENT DOMAIN. (a) The district shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind and character in fee simple, or any lesser interest in property, within the boundaries of the district necessary or convenient to the powers, rights, and privileges conferred by this Act, in the manner provided by the general law with respect to condemnation by counties. The district shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended, or to make bond as provided in that law. In condemnation proceedings being prosecuted by the district, the district shall not be required to pay in advance or give bond or other security for costs in the trial court, or to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction or to give bond for costs or for supersedeas on any appeal or writ of error.

(b) If the board requires the relocation, raising, lowering, rerouting, or change in grade or alteration of the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, or facilities, or pipelines in the exercise of the power of eminent domain, all of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction due to the exercise of the power of eminent domain shall be the sole expense of the board. The term "sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

SECTION 14. TAX ASSESSMENT AND COLLECTION. (a) The directors shall have the authority to levy taxes for the entire year in which the district is established as a result of the election provided in this Act. The commissioners court shall serve as the board of equalization for the district and all taxes of the district shall be assessed and collected on county tax values as provided by Subsection (b) of this section unless the board, by majority vote, elects to appoint a board of equalization and to have taxes assessed and collected by its own tax assessor-collector under Subsection (c) of this section. That determination may be made by the board before December 1 annually and shall govern the manner in which taxes are subsequently assessed and collected until changed by a similar resolution. Hospital tax shall be levied on all taxable property within the district subject to hospital district taxation.

(b) Under this subsection, district taxes shall be assessed and collected on county tax values in the same manner as provided by law with relation to county taxes. The tax assessor-collector of the county in which the district is located shall be charged and required to accomplish the assessment and collection of all taxes levied by and on behalf of the district. The assessor-collector of taxes may charge and deduct from payments to the hospital district fees for assessing and collecting the taxes at a rate of not more than one percent of the taxes assessed. Those fees shall be deposited in the officers salary fund of the county and reported as fees of the office of the county tax assessor-collector. Interest and penalties on taxes paid to the hospital district shall be the same as in the case of county taxes. Discounts shall be the same as allowed by the county. The residue of tax collections after deductions of discounts and fees for assessing and collecting shall be deposited in the district's depository. The bond of the county tax assessor-collector shall stand as security for the proper performance of his or her duties as assessor-collector of the district; or, if in the judgment of the district board of directors it is necessary, additional bond payable to the district may be required. In all matters pertaining to the assessment, collection, and enforcement of taxes for the district, the county tax assessor-collector shall be authorized to act in all respects according to the laws of the State of Texas relating to state and county taxes. With the approval of the commissioners court, the board may order the county tax assessor-collector to assess the property in the district at a specified percentage of fair market value that is different than that used for state and county purposes. The tax assessor-collector shall assess the property at that percentage until the board, with the approval of the commissioners court, orders a change in the percentage of fair market value used in assessing the property.

(c) Under this subsection, taxes shall be assessed and collected by a tax assessor-collector appointed by the directors, who shall also fix the term of his or her employment, compensation, and requirement for bond to assure the faithful performance of his or her duties, but in no event shall the bond be for less than \$5,000. The expense of the bond may be paid from district funds. The directors shall annually appoint five persons to serve as a board of equalization and shall fix their compensation. Each member of the board and the tax assessor and collector shall be residents of the district, and each shall have the same duties, including the obligation to execute the oath of office, as required of county officials exercising those powers and duties. Except as provided in this law to the contrary, all the provisions of Title 122, Revised Civil Statutes of Texas, 1925, as amended, shall apply to the district.

SECTION 15. EMPLOYMENT BENEFITS. The district may provide retirement benefits for district employees by electing to become a participating subdivision in the Texas County and District Retirement System, by creating and administering a public retirement system for the district, or by purchasing

annuity contracts from an insurance or annuity company qualified and admitted to do business in this state. The district also may contract with the appropriate agencies for programs of unemployment compensation and workers' compensation. If the board elects to pay contributions for unemployment compensation, the board shall pay contributions to the Texas Employment Commission in accordance with the Texas Unemployment Compensation Act, as amended (Article 5221b-1 et seq., Vernon's Texas Civil Statutes).

**SECTION 16. INDIGENT CARE.** Whenever a patient residing within the district is admitted to the facilities of the district, the administrator for the hospital to which the patient is admitted may have an inquiry made as to his or her circumstances and those of the relatives of the patient legally liable for his or her support. If the administrator finds that the patient or his or her relatives are able to pay for his or her care and treatment in whole or in part, an order shall be made directing the patient or his or her relatives to pay to the hospital district for the care and support of the patient a specified sum per week in proportion to financial ability. The administrator may collect those sums from the estate of the patient or his or her relatives legally liable for support in the manner provided by law for collection of expenses in the last illness of a deceased person. If the administrator finds that the patient or his or her relatives are not able to pay either in whole or in part for care and treatment in the hospital, they shall become a charge on the hospital district as to the amount of the inability to pay. Should there be a dispute as to the ability to pay or doubt in the mind of the administrator, the board shall hear and resolve the dispute and issue its final order after calling witnesses. Appeals from a final order of the board shall lie in the district court. The substantial evidence rule shall apply.

**SECTION 17. DONATIONS.** The board may accept on behalf of the district donations, gifts, and endowments to be held in trust for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by the donor consistent with proper management and object of the hospital district.

**SECTION 18. FACILITIES OF DISTRICT.** (a) Subject to other provisions of this Act, the board is given complete discretion as to the types, number, and locations of buildings required to establish and maintain an adequate hospital system. The hospital system may include domiciliary hospital care of the sick, wounded, and injured, outpatient clinics, dispensaries, geriatric domiciliary care, convalescent home facilities, necessary nurses, domiciliaries and training centers, blood banks, community health centers, and research centers or laboratories, and any other facilities deemed necessary for hospital and medical care by the board.

(b) The hospital transferred to the district by Jackson County shall be known as the "Mauritz Memorial Hospital."

(c) The district, through its board, may enter into an operating or management contract with any person regarding all or any of its hospitals or hospital system, and it may delegate to the administrator or the administrators of the respective hospitals the power to manage and operate all or any part of the hospital system and to employ and discharge employees or appoint and remove staff doctors pursuant to valid bylaws, rules, and regulations.

(d) The board may lease all or part of the facilities comprising the hospitals and/or medical system on terms and conditions it considers to be in the district's best interest. In connection with the lease, the board may delegate as it deems appropriate any of its powers to manage, control, and administer the leased facilities to furnish hospital and medical care. The provision of hospital and medical care at any leased facilities is subject to all applicable laws and all rules of the Texas Department of Health, the Texas Health Facilities

Commission, or any other state or federal agency having jurisdiction. The facilities are subject to inspection by any authorized representative of any of those agencies. If all or part of the district's facilities are leased, the lease shall require that the lessee charge rates for services rendered or goods provided at the leased premises that, together with other sources of the lessee's revenues, will produce revenues sufficient to enable the lessee to pay the expenses of operation and maintenance of the leased premises required of the lessee under the lease. The lease shall also require the lessee to pay lease rentals to the district that will be sufficient, when taken with any other sources of the district's estimated revenues which are pledged for the same purposes, to pay the interest on any revenue or special obligation bonds that are payable in whole or part from the lease rentals, to create and maintain a sinking fund to pay the principal of and premium, if any, on the bonds as they become due, to create and maintain a bond reserve fund and any other fund provided for in the bond order, resolution, or trust indenture authorizing the issuance of the bonds, and to pay all other charges, fees, costs, and expenses required to be paid by the lessee in accordance with the resolution or indenture. The lease, management agreement, bond resolution, or trust indenture may prescribe systems, methods, routines, procedures, and policies under which the facilities owned by the district shall be operated. A lease of a district hospital shall require the lessee to operate the hospital in a manner that complies with the requirements in this Act that would be applicable to the board if the board were operating the hospital.

SECTION 19. AFFAIRS OF DISTRICT. (a) The board shall have control over and management of all of the affairs of the district and the existing hospitals located therein, and shall employ or contract with persons, firms, partnerships, or corporations as deemed necessary or advisable by the board for the conduct of the affairs of the district, including, but not limited to, nurses, medical technicians, engineers, architects, attorneys, financial advisors, accountants, fiscal agents, a hospital administrator for the district or for each facility, bookkeepers, auditors, and secretaries. The district shall contract in the name of the district.

(b) The board shall determine the powers, authority, duties, term of employment, and compensation of all employees and consultants by contracts or by resolution or order of the board.

(c) Any employee's employment may be terminated by the board.

(d) The board may require a bond of any officer or employee payable to the district and conditioned on the faithful performance of his or her duties. The expense of any bond required of an officer or employee may be paid from district funds.

(e) The board shall adopt reasonable and necessary rules and bylaws to govern the proceedings and activities of the board and the hospitals or the hospital or medical system.

(f) The board may purchase all materials, supplies, equipment, and vehicles needed by the district.

(g) The board shall adopt a seal for the district.

(h) No director may receive compensation for his or her services as director, but, on approval by the board, a director may be reimbursed for travel or other expenses incurred on behalf of the district on presentation of a verified statement.

(i) As soon as practicable after a director is elected or appointed he or she shall execute a bond for \$5,000, payable to the district and conditioned on the faithful performance of his or her duties.

(j) The board shall approve all bonds of the directors, including the bonds of the temporary directors. The expense of the bonds may be paid from funds of the district.

(k) Each director shall take the oath of office prescribed by the Texas Constitution for public officers.

(l) Each director shall file the bond and oath with the board, to be retained in its records.

**SECTION 20. GENERAL POLICY.** After the creation of the district is confirmed at a district election as provided by Section 3 of this Act, the district shall assume the control of the hospitals transferred to it by Jackson County and the Edna Hospital District, and shall establish a hospital system as provided by Section 2 of this Act. The board shall provide for the administration, maintenance, and operation of both hospitals transferred to the district on its creation so as to furnish adequate hospital and medical care within the district and to ensure that each hospital is provided with sufficient funds, personnel, and equipment to the end that residents of the district have access to quality and competent health facilities; and no other municipality or political subdivision may levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district. The district shall assume full responsibility for providing medical and hospital care for its needy inhabitants. After creation of the district is confirmed at a district election, the district shall take over and there shall be transferred to it title to all land, buildings, improvements, permits, licenses, and certificates pertaining to the hospitals or hospital system which may be located wholly within the district and owned by either Jackson County or the Edna Hospital District.

**SECTION 21. RECOMMENDATIONS TO LEGISLATURE.** (a) The board may not recommend to the legislature legislation to amend this Act unless recommendation of that legislation is approved by seven directors.

(b) The board shall give notice of the date, hour, place, and subject of a meeting at which recommendation of legislation will be discussed. Notice of the meeting shall comply with Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), but the board shall furnish to the county clerk the notice required by Section 3A(g) of that Act at least 30 days before the date of the meeting. The notice shall be published in a newspaper of general circulation in the district once a week for four weeks, the first publication to appear at least 30 days before the date of the meeting.

**SECTION 22. STATE APPROPRIATIONS.** The support and maintenance of a hospital district created under this Act shall never become a charge against or obligation of the State of Texas, nor shall any direct appropriation be made by the legislature for the construction, maintenance, or improvement of any of the facilities of the district.

**SECTION 23. TAX STATUS OF DISTRICT BONDS.** In carrying out the purposes of this Act, a district created under this Act will be performing an essential public function, and any bonds issued by it and their transfer and issuance by the district, including any profits made in the sale of the bonds, shall at all times be free from taxation by the state or any municipality or political subdivision of the state.

**SECTION 24. REPEALER.** On the date that the Jackson County Hospital District is created by this Act, Chapter 172, Acts of the 60th Legislature, Regular Session, 1967, is repealed.

**SECTION 25. SHORT TITLE.** This Act may be cited as the Jackson County Hospital District Act.

**SECTION 26. NOTICE.** The legislature finds publication of the notice required in the enactment of this Act under the provisions of Article IX, Section 9, of the Texas Constitution has been made in the manner and form provided by law pertaining to the enactment of local and special laws.

**SECTION 27. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted.

On motion of Senator Patman and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

**S.B. 1297** (Mauzy) Relating to Dallas County Juvenile Board and juvenile and court services. (31-0)

**S.B. 1299** (Meier) Relating to jurisdiction of County Criminal Courts No. 3 and 4 of Tarrant County. (31-0)

**S.B. 1306** (Farabee) Creating the Wichita County Hospital District.

Senator Farabee offered the following amendment to the bill:

Amend S.B. No. 1306 as follows:

- (1) On page 2, line 25, strike "a tax" and substitute "annual taxes".
- (2) On page 2, lines 68 and 69, strike "a majority of".
- (3) On page 3, line 25, strike "five" and substitute "four".
- (4) Strike the first sentence of Section 5(a).
- (5) Add the following at the end of Section 5(a):

The board of directors shall manage, control, and administer the hospitals and hospital system of the district and all funds and resources of the district. Operating, depreciation, or building reserves may not be invested in any funds or securities other than:

- (1) direct, indirect, or guaranteed obligations of the United States government or its agencies;
- (2) certificates of deposit of any bank or trust company, secured by obligations described in Subdivision (1) of this subsection; or
- (3) funds or securities specified in Article 836 or 837, Revised Civil Statutes of Texas, 1925, as amended.

(6) On page 3, line 64, after "person" insert ", governmental entity, firm, corporation, or association".

(7) On page 4, line 12, after "person" insert ", firm, corporation, or association".

- (8) After the first sentence in Section 6, add the following sentence:

The board shall have an annual audit made of the financial condition of the district, which shall be open to inspection at the principal office of the district.

- (9) At the end of Section 6, add the following sentence:

As soon as practicable at the close of each fiscal year, the board shall have prepared a full sworn statement of all money belonging to the district and a full account of the disbursements.

- (10) At the end of Section 7(a), add the following:

As soon as practicable after the election is held, the board shall convene and canvass the returns of the election and declare the results. If a majority of the votes cast in the election favor the issuance of the bonds, the board may issue the bonds in the manner provided in this Act.

- (11) On page 8, line 19, after "board" add "of equalization".
- (12) On page 8, line 41, strike "treasurer" and substitute "district".
- (13) On page 8, line 50, after "district" insert "as to the amount of the inability to pay".

The amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

**C.S.S.B. 1309** (Patman) Relating to creation of the Williamson County Water Authority. (31-0)

**S.B. 1076** (Harris) Enacting Solid Waste Resource Recovery Financing Act. (31-0)

**C.S.S.B. 780** (Harris) Relating to public weighers; providing penalties. (31-0)

**C.S.H.B. 155** (Harris) Relating to conversion privileges under group health insurance. (31-0)

**H.B. 284** (Schwartz) Relating to the duties of the district attorney of the 23rd Judicial District. (31-0)

**H.B. 449** (Meier) Relating to driving while intoxicated by certain minors. (31-0)

**H.B. 567** (Meier) Relating to the membership and powers of limited partnerships. (31-0)

**H.B. 673** (Brooks) Relating to reports of children's injuries.

Senator Doggett offered the following amendment to the bill:

Amend HB 673 by striking Section 1 and substituting in lieu thereof the following:

SECTION 1. Chapter 34, Family Code, as amended, is amended by adding Section 34.011 to read as follows:

Sec. 34.011. FORM. The Texas Department of Human Resources shall promulgate a form and cause a sample to be distributed for the reporting of suspected occurrences of child abuse as required by Section 34.01 of this code. Copies of the form shall be distributed to all licensed hospitals in this state to be available for use without charge by hospital employees, physicians, patients, and other persons. The form shall include a statement that child abuse reports are confidential and that information contained in the reports, including the name of the person making the report, may be used only for the purposes consistent with the investigation of child abuse. The form shall give the address of the Texas Department of Human Resources. Hospital employees, physicians, patients, and other persons must complete the form and return it to the Texas Department of Human Resources.

The amendment was read and was adopted.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)



**H.B. 750** (Blake) Creating the office of criminal district attorney of Jasper County and abolishing the office of county attorney.

Senator Blake offered the following amendment to the bill.

Amend H.B. No. 750 by striking "1980" in the second sentence in Subsection (a) of Section 8 of the bill and substituting "1982".

The amendment was read and was adopted.

Senator Blake offered the following amendment to the bill.

Amend House Bill 750 by adding the words "with the advice and consent of the Senate," after the word "county" and before the word "who" in Section 8, Page 2, Line 18 and also after word "governor" and before the word "and" in Section 8, Page 2, Line 25 of the Committee Printing of the bill.

The amendment was read and was adopted.

On motion of Senator Blake and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (vv)

**H.B. 794** (Snelson) Relating to the presentment of indictments by grand juries. (31-0)

**H.B. 801** (Ogg) Relating to payment of construction contracts by municipal utility districts. (31-0)

**H.B. 874** (Schwartz) Relating to space and equipment for justices of the peace. (31-0)

**H.B. 980** (Brooks) Relating to an exception from the child labor law for certain apprentices and vocational students. (31-0)

**H.B. 1022** (Truan) Relating to the application of the Uniform Wildlife Regulatory Act to Kleberg County. (31-0)

**H.B. 1071** (Schwartz) Relating to the exchange of certain state-owned land by the Department of Corrections. (31-0)

**H.B. 1079** (Harris) Relating to the definition of "covered claim" under the Property and Casualty Insurance Guaranty Act. (31-0)

**C.S.H.B. 1160** (Traeger) Relating to sale of property subject to a possessory lien. (31-0)

**H.B. 1167** (Creighton) Relating to the compensation of the judge of the 16th Judicial District. (31-0)

**H.B. 1206** (Harris) Relating to continuation of certain insurance benefits after death of the insured. (31-0)

**H.B. 1225** (Schwartz) Relating to reservation of campsites at state parks. (31-0)

**H.B. 1245** (Schwartz) Relating to election of drainage commissioners in Brazoria County. (31-0)

**H.B. 1293** (Williams) Relating to county parks. (31-0)

**H.B. 1297** (Meier) Relating to policy forms, endorsements, and gross receipts tax for aircraft insurance. (31-0)

**H.B. 1333** (Truan) Relating to jurisdiction of justice and county courts. (31-0)

**H.B. 1413** (Short) Relating to the duties of the county attorney of Terry County and the district attorney of the 121st Judicial District.

Senator Short offered the following committee amendment to the bill.

Amend H.B. No. 1413, page 1, line 22 by deleting the period and adding the following: "upon the expiration of the term of office of the present County Attorney of Terry County."

Beginning on line 22 and continuing on line 23, delete the following: "On and after the effective date of this Amendment,"

On line 23, capitalize the word "the" before the words District Attorney.

The committee amendment was read and was adopted.

Senator Short offered the following committee amendment to the bill.

Amend H.B. No. 1413, page 2, line 4, by inserting the word "Terry" following the comma after the word "Hockley".

The committee amendment was read and was adopted.

On motion of Senator Short and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

**H.B. 1457** (Snelson) Relating to the leasing of Relinquishment Act land for oil and gas when the owner of the soil is unknown or unavailable.

Senator Snelson offered the following amendment to the bill.

Amend H.B. No. 1457, Senate Committee Report, on page 1, line 34, by striking the period and inserting the following: "and by written certification from the tax assessor and collector of each taxing entity in which the land is located stating that ad valorem taxes owed to that entity have not been paid by the owner of the soil or an undivided interest therein or his representative for any year within the five years preceding the year in which the written request is submitted to the commissioner under this section."

The amendment was read and was adopted.

Senator Snelson offered the following amendment to the bill.

Amend House Bill 1457 by deleting the words "General Land Office" in Section One, Line 36, page 1 and substitute in that space:

"tax assessor-collector in the county where the land is located"

The amendment was read and was adopted.

On motion of Senator Snelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

**H.B. 1565** (Santiesteban) Relating to the filing of briefs in criminal cases. (vv)

**H.B. 1803** (Longoria) Relating to state loans for the establishment of plants to manufacture alcohol as a fuel. (31-0)

**H.B. 1824** (Meier) Relating to the leasing or sale of county land for certain purposes.

Senator Meier offered the following committee amendment to the bill.

Amend **H.B. 1824** by substituting the following for Section 7 thereof:

Any lease hereunder of county-owned property or air rights thereto shall be leased upon a competitive bid and for a consideration of not less than the fair market lease value and may otherwise be upon such terms and conditions as the parties may mutually agree upon consistent with the constitution and laws of this state.

The committee amendment was read and was adopted.

Senator Meier offered the following committee amendment to the bill.

Amend **H.B. 1824** by striking Section 8 thereof and renumbering the subsequent sections accordingly.

The committee amendment was read and was adopted.

On motion of Senator Meier and by unanimous consent, the caption was amended to conform to the body of the bill as amended. (31-0)

**H.B. 1857** (Brooks) Relating to payment of interest and creation of interest reserves by municipal utility districts. (31-0)

**C.S.H.B. 1858** (Brooks) Relating to issuance of bonds to pay interest and create interest reserves for water control and improvement districts. (31-0)

**H.B. 1907** (Parker) Relating to the creation of municipal power agencies. (31-0)

**H.B. 2108** (Brooks) Relating to filing of state tax liens by county clerks. (31-0)

**H.B. 2172** (Brooks) Relating to county purchases and the keeping of county inventories in Harris County. (31-0)

**H.B. 2191** (Patman) Relating to the salary of members of the DeWitt County Drainage Commission. (31-0)

**H.B. 2225** (Blake) Relating to the per diem received by certain members and employees of the legislature. (31-0)